

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "AGREEMENT") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office located at 1001 I Street, Sacramento, California 95814 and MIDWEST CAN COMPANY, LLC (hereinafter "MIDWEST"), with its principal place of business located at 10800 Belmont Ave, Franklin Park, Illinois, 60131 (collectively, "The Parties," or individually as a "Party").

RECITALS

1. The California Health and Safety Code mandates CARB to reduce emissions from vehicular and non-vehicular emissions sources, including portable fuel containers, by adopting standards and regulations. (Health and Saf. Code §§ 43013, 43018.)
2. CARB adopted certification standards, test procedures, and administrative requirements in its *Portable Fuel Containers and Spill-Proof Spouts Regulation* to reduce emissions and spills from portable fuel containers. (Cal. Code Regs., tit. 13 § 2467 et seq.)
3. Any person who sells, supplies, offers for sale, advertises or manufactures for sale in California portable fuel containers or spouts or components, for use in California, must certify these containers, spouts, or components for use and sale and obtain an Executive Order. (Cal. Code Regs., tit. 13, §§ 2467 and 2467.2.)
4. If the Executive Officer finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, or offering for sale in the State of California a portable fuel container system or its components that do not comply with the requirements set forth in the *Portable Fuel Containers and Spill-Proof Spouts Regulation*, he or she may enjoin said manufacturer, distributor, or retailer from any further manufacture, advertisement, sales, offers for sale, or distribution of such noncompliant portable fuel container systems or their components in the State of California pursuant to section 43017 of the Health and Safety Code. The Executive Officer may also assess penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code and/or revoke any Executive Order issued for the noncompliant portable fuel container system or its components. (Cal. Code Regs., tit. 13, § 2467.8.)
5. Failure to comply with any requirements of the *Portable Fuel Containers and Spill-Proof Spouts Regulation* is a violation of state law which may result in penalties up to five hundred dollars (\$500) for strict liability violations, respectively, for each unit. (Cal. Code Regs., tit. 13, § 2467.9; Health & Saf. Code § 43016.)
6. During the timeframe between April 1, 2016, and February 11, 2017, MIDWEST manufactured portable fuel containers under CARB Executive Order G-16-001A for

use and sale in California

7. In February of 2017, CARB obtained commercially available MIDWEST model 2300, 2-gallon 8-ounce portable fuel containers with model 4230 spouts.
8. CARB tested the sample batch of MIDWEST model 2300, 2-gallon 8-ounce portable fuel containers with model 4230 spouts and, in May of 2017, CARB's Monitoring and Laboratory Division reported in a memo that two of the six portable fuel containers in the sample batch, as tested, failed to meet the diurnal performance standard.
9. MIDWEST subsequently reported one hundred fifty-five thousand eight hundred fourteen (155,814) sales of model 2300 portable fuel containers with model 4230 spouts that were manufactured between April 1, 2016, and February 11, 2017, (hereinafter "Subject Units") in California.
10. CARB alleges that the SUBJECT UNITS are not legal in California because they failed to meet the certification requirements of the *Portable Fuel Containers and Spill-Proof Spouts Regulation*.
11. On August 17, 2017, CARB issued a Cease and Desist letter to MIDWEST to halt all sales of the affected PFCs. On January 22, 2019, CARB issued a Notice of Violation to MIDWEST.
12. MIDWEST promptly cooperated with CARB in the investigation of this matter.
13. MIDWEST is incorporated in Delaware and doing business in California.
14. This is CARB's second enforcement matter involving MIDWEST.
15. CARB alleges that if the facts described in recital paragraphs 1 through 9 were proven, civil penalties could be imposed against MIDWEST as provided in Health and Safety Code section 43016.
16. MIDWEST disputes and denies any liability arising from the facts presented in recital paragraphs 1 through 9.
17. In consideration of the foregoing, and of the promises and facts set forth herein, the PARTIES desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this AGREEMENT, without the need for formal litigation. MIDWEST has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and resolution of this matter with CARB. CARB accepts this AGREEMENT in termination and settlement of this

matter.

TERMS AND RELEASE

In settlement of the claims described above, and in consideration of CARB not filing a legal action against MIDWEST for the alleged violations referred to above, CARB and MIDWEST agree as follows:

1. MIDWEST agrees to pay a total sum of five hundred seventy-six thousand five hundred eleven dollars and eighty cents (**\$576,511.80**), as set forth below.
2. MIDWEST shall pay two hundred eighty-eight thousand two hundred fifty-five dollars and ninety cents (**\$288,255.90**) as a penalty by check or wire transfer to the **California Air Pollution Control Fund** within **30 days** from the date this AGREEMENT is fully executed.

If payment is by check, MIDWEST's check shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, CA 95812-1436

If payment is by wire transfer, the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be sent to:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case #C00039

Wire Transfer Fee: MIDWEST is responsible for any bank charges incurred for processing wire transfers.

3. MIDWEST agrees to fund a Supplemental Environmental Project (SEP), as described in Attachment B, to offset a portion of the settlement amount, consistent with CARB's SEP Policy. MIDWEST agrees that by funding the SEP described in Attachment B, MIDWEST will not receive a financial benefit.
4. MIDWEST shall pay two hundred eighty-eight thousand two hundred fifty-five dollars and ninety cents (**\$288,255.90**) as a penalty by check or wire transfer to the SEP implementer, **Tree Fresno**, within **30 days** from the date this AGREEMENT is fully

executed.

If payment is by check, MIDWEST's check shall be accompanied with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) and sent to:

Mona N. Cummings, MPA
Chief Executive Officer
Tree Fresno
3150 E. Barstow Ave
Fresno, CA 93740

If payment is by wire transfer, the attached "Settlement Agreement Payment Transmittal Form" (Attachment A - 2) shall be sent to:

Tree Fresno
Beneficial State Bank
170 W. Shaw Ave.
Fresno, CA 93722
Routing number: 321181491
Account: 7300009076

Wire Transfer Fee: MIDWEST is responsible for any bank charges incurred for processing wire transfers.

5. MIDWEST shall send the original signed and dated AGREEMENT, copies of payments, copies of the Settlement Agreement Payment Transmittal Forms (Attachment A), (Attachment A - 2), and any future mailings or documents required per the terms of this AGREEMENT to:

Mr. Nathan Biasotti
California Air Resources Board
Enforcement Division
8340 Ferguson Ave
Sacramento, CA 95828
Nathan.Biasotti@arb.ca.gov

6. If a payment or payment installment is not made within ten (10) business days of the date specified above, the entire remaining balance, plus a penalty interest rate of 10 percent per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
7. MIDWEST represents that it is aware of the statutory and regulatory authority cited in recital paragraphs 1 through 5, and agrees that any products sold,

supplied, offered for sale, advertised, or manufactured for sale in California must comply with all applicable standards.

8. It is agreed that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of state environmental statutes. Therefore, it is agreed that this penalty imposed on MIDWEST by CARB arising from the facts described in recital paragraphs 1 through 9 are nondischargeable under 11 U.S.C § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
9. This AGREEMENT shall apply to and be binding upon MIDWEST and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this AGREEMENT.
10. In consideration of the payment by MIDWEST to the California Air Pollution Control Fund and SEP in the amount specified above, CARB hereby releases MIDWEST and its shareholders, principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that CARB may have relating to the SUBJECT UNITS and based on the allegations described in recital paragraphs 1 through 9.
11. This AGREEMENT constitutes the entire agreement and understanding between CARB and MIDWEST concerning the claims and settlement in this AGREEMENT, and this AGREEMENT fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and MIDWEST concerning these claims.
12. The effective date of this AGREEMENT shall be the date upon which it is fully executed.
13. No agreement to modify, amend, extend, supersede, terminate, or discharge this AGREEMENT, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all PARTIES to this AGREEMENT.
14. Each PARTY to this AGREEMENT has reviewed the AGREEMENT independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this AGREEMENT, and has not relied in any way on any inducement, representation, or advice of any other PARTY in deciding to enter into this AGREEMENT.

15. This AGREEMENT shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
16. Each provision of this AGREEMENT is severable, and in the event that any provision of this AGREEMENT is held to be invalid or unenforceable in any jurisdiction, the remainder of this AGREEMENT remains in full force and effect.
17. This AGREEMENT is deemed to have been drafted equally by the PARTIES; it will not be interpreted for or against either PARTY on the ground that said PARTY drafted it.
18. The failure of any PARTY to enforce any provision of this AGREEMENT shall not be construed as a waiver of any such provision, nor prevent such PARTY thereafter from enforcing such provision or any other provision of this AGREEMENT. The rights and remedies granted all PARTIES herein are cumulative and the election of one right or remedy by a PARTY shall not constitute a waiver of such PARTY's right to assert all other legal remedies available under this AGREEMENT or otherwise provided by law.
19. This AGREEMENT shall further serve to toll any statute of limitations until all terms and conditions of this AGREEMENT have been fulfilled.
20. This AGREEMENT may be executed in separate counterparts.

21. Penalty Determination

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.)

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit basis for the penalty.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors (Health & Saf. Code § 42403). The per-unit penalty in this case is a maximum of \$500 per unit per strict liability violation (Health & Saf. Code § 43016). The penalty obtained in this case is \$3.70 per unit for 155,814 SUBJECT UNITS. The penalty in this matter reflects the fact that MIDWEST fully cooperated with the investigation, and the violation was corrected in a timely manner.

Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and

CARB's assessment of the relative strength of its case against MIDWEST, and the desire to avoid the uncertainty, burden and expense of litigation. Penalties in other cases may be smaller or larger depending on the unique circumstances of the case.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is Health and Safety Code section 43016, because MIDWEST sold, and/or offered for sale, and/or advertised portable fuel containers that, as tested, violated the standards required for certification pursuant to California Code of Regulations, title 13, section 2467.2(b).

Whether the penalty is being assessed under a provision of law that prohibits the emission of pollution at a specified level, and if so, a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as time of use, is not available. However, since the portable fuel containers, as tested, did not meet the applicable certification standards for sale in California, emissions attributable to them are illegal and excess as well. In the interest of settlement and because of the time and expense involved, the parties elected not to do such testing.

22. MIDWEST acknowledges that CARB has complied with Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.
23. The penalty in this case was based in part on confidential business information provided by MIDWEST that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and MIDWEST that CARB does not retain in the ordinary course of business either.
24. Each of the undersigned represents that he or she has full power and authority to enter this AGREEMENT.

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[Signatures on the following page]

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: _____ /S/ _____

Name: Richard W. Corey

Title: Executive Officer

Date: 12/3/2019

Midwest Can Company, LLC

By: _____ /S/ _____

Name: Jerry W. Burris

Title: President & CEO

Date: 11/11/2019